U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Nebraska Service Center Date: AUG 3 2000

LIN 99 213 52453

IN RE: Petitioner: [redacted]

Beneficiary:

Public Copy

APPLICATION: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER:

[redacted]

[illegible] deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiance of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had not established that she and the beneficiary personally met within two years prior to the date of filing the petition.

On appeal, counsel asserts that the petitioner is entitled to a discretionary waiver of the two-year-meeting requirement because compliance would cause extreme hardship to the petitioner and to her son. He further asserts that the petitioner will experience loss of income, loss of health insurance benefits, and the unavailability of suitable medical care in the country to which the petitioner and her child would relocate, coupled with the absence of adequate health insurance upon relocation.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

> An alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission, and the minor children of such fiancee or fiance accompanying him or following to join him.

Section 214(d) of the Act, 8 U.S.C. 1184(d), states, in pertinent part, that a fiance(e) petition:

> shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

8 C.F.R. 214.2(k)(2) provides that as a matter of discretion, the director may exempt the petitioner from the requirement that the parties have previously met only if it is established that compliance would result in extreme hardship to the petitioner or

that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petition was filed with the Service on July 19, 1999. Therefore, the petitioner and the beneficiary must have met in person between July 20, 1997 and July 19, 1999.

The petitioner claimed in a statement dated September 22, 1999, that she and the petitioner met in the United States at a Christmas party in December 1995 and began dating thereafter. When she realized she was pregnant, she and the petitioner rented an apartment and they resided together from July 12, 1996 until he was removed by the Immigration Service on June 11, 1997. The petitioner further claimed that she had waited until now to file a fiance petition because she was under age.

While counsel claims on appeal that relocation of the petitioner and her child would result in extreme hardship, Service regulations at 8 C.F.R. 214.2(k)(2) require only that the beneficiary and the petitioner meet within two years before the date of filing the petition. There is no provision in the regulation or statute that the petitioner has to depart from the United States to reside with the beneficiary in his or her home country.

The petitioner has failed to establish that she and the beneficiary have met personally within the required period pursuant to section 214(d) of the Act. Nor has the petitioner established that she warrants a discretionary waiver or exemption of the requirement pursuant to 8 C.F.R. 214.2(k)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed. This decision is without prejudice to the filing of a new petition (Form I-129F) once the petitioner and the beneficiary have met in person.

ORDER: The appeal is dismissed.